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No. 121

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In the Supreme Court of the United States

OCTOBER TERM, 1961

L. D. RAGAN, *Appellant*,

v.

CITY OF SEATTLE, *Appellee*,
WASHINGTON MUSIC MERCHANTS, INC.,
Intervening Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

MOTION TO DISMISS APPEAL

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The Intervening Appellee, Washington Music Merchants, Inc., pursuant to Rule 16 of Revised Rules of this Court, moves to dismiss the appeal herein on the following ground:

NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED BY THE APPEAL

1. Constitutionality of the Fee Required From Otherwise Eligible Applicants for a License to Own and Operate a Mechanical Music Machine in the City of Seattle.

The Supreme Court of the State of Washington did not pass on this question on the adequate non-

federal ground that the appellant lacks standing to raise it because he is not within the class affected by the fee requirement. *State ex rel. Campbell v. Case,* 182 Wash. 334, 47 P. (2d) 24 (1935).

Therefore, this question is not before the Court.

2. Constitutionality of the Limitation Imposed by the Ordinance on the Number of Persons Who May Own and Operate Mechanical Music Machines in the City of Seattle.

It has long been settled that a legislative enactment does not violate the Fourteenth Amendment if the facts admitted or generally assumed do "not preclude the possibility of a rational basis for the legislative judgment." *Ohio ex rel. Clarke v. Deckebach,* 274 U.S. 392, 71 L. ed. 1115, 37 S.Ct. 630 (1927).

An ordinance licensing a trade or occupation is presumed to be reasonable and to have a substantial relationship to the accomplishment of purposes within the scope of the police power. The burden of overturning this presumption is on the appellant, and he does not meet this burden by speculating about the legislative motives which occasioned enactment of the ordinance.

It cannot be said that there is no rational basis for a legislative judgment that mechanical music machines have a potentially deleterious effect on public health and morals and that the number of owners and operators of such machines should be limited to one for every 10,000 persons.

Nor can it be said that it is unreasonable for a legislative body to decide that, instead of expropriating existing investments by immediate revocation of sufficient licenses to bring the total down to the

level prescribed in the ordinance, it will permit normal attrition to accomplish the regulatory goal.

The question is: Can any state of facts that would sustain such a choice be reasonably conceived? *Tigner v. Texas*, 310 U.S. 141, 84 L. ed. 1124, 60 S.Ct. 679 (1940); a legislative body may reasonably suppose that a person who has been able to get and retain a license under prior regulations is more apt to be a responsible, reliable, and law-abiding operator than a person who has no performance record. Futhermore, a legislative body may reasonably believe, when establishing a new regulatory program, that it should give an advantage to persons who have an existing, going interest in the business being regulated as against persons whose interest is only prospective.

The question as to the constitutionality of the limitation on the number of persons who may own and operate mechanical music machines in the City of Seattle is not sufficiently substantial to support an appeal. *Zucht v. King*, 260 U.S. 174, 67 L. ed. 194, 43 S.Ct. 24 (1922).

CONCLUSION

For the reasons set forth above, the appeal should be dismissed.

Respectfully submitted,

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